IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.142/1994
(M.C. Gulecha Vs. State of Raj. & Ors.)

Date of order : 29.10.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. R.N. Upadhyay, for the petitioner.
Mr. S.N. Tiwari, Dy. Govt. Advocate.

By way of filing the present writ petition, the petitioner has challenged the order dated 26.9.1992 (Annexure-14) as well as order dated 24.9.1993 (Annexure-16) and prayed for consequential benefits along with interest at the rate of 18% per annum.

According to the facts inter-alia narrated in the writ petition, the petitioner was working on the post of Assistant Engineer in the respondent Department and he was charge-sheeted under Rule 16 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 vide memorandum of charge-sheet dated 01.03.1986 (Annex.-1). The petitioner was

initially appointed on the post of Junior Engineer on temporary basis. Thereafter, he was appointed as Assistant Engineer after due selection through Rajasthan Public Service Commission vide order dated 31.10.1974. In the charge-sheet under memorandum dated 01.03.1986 under Rule 16 of the RCS (CCA) Rules it was alleged that the petitioner remained absent from duties w.e.f. 10.7.1983. In pursuance of the charge sheets issued to the petitioner, the petitioner filed his reply. Thereafter, the Additional Commissioner (I), Departmental Enquiries, Jaipur was appointed as Inquiry Officer vide order dated 19.7.1986. In the enquiry, a major penalty of withholding of three grade increments with cumulative effect was imposed against the petitioner vide order dated 23.4.1987. Against that order, a review petition under Rule 33 of the Rules was filed by the petitioner and the said review petition was dismissed vide order dated 18.2.1988. Second review petition filed by the petitioner under Rule 34 of the Rules of 1958 was also dismissed vide order dated 18.9.1989.

The order of penalty and orders passed by reviewing authority were challenged by way of filing writ petition before this Court. The said writ petition was registered as SB Civil Writ Petition No.3798/1991 and the same was decided by vide judgment dated 3.2.1992. The operative part of the order passed was as follows :

> "Consequently, I hereby allow this writ petition, set aside Annexure-5 dated 23rd April 1987 under which the penalty of stoppage of three annual grade increments with cumulative effect was imposed on the petitioner. I also set aside the order dated 18th February, 1988. The review petition is said to have been dismissed on 18th September 1989. It will, be, however, open for the respondents to proceed from the stage after inquiry report."

In the aforesaid writ petition, a liberty was granted to the State to proceed from the stage of supplying copy of enquiry report and the punishment order dated 23.4.1987, order of review dated 18.2.1988 and the order dated 18.9.1989 were set aside. Thereafter, as per direction of this Court the enquiry report was supplied to the petitioner, against which, the petitioner filed his reply, Annexure-2. After filing reply by the petitioner against the enquiry report, vide impugned order Annexure-14 dated 26.9.1992, finally a penalty of withholding of three grade increments with cumulative effect was inflicted against the petitioner and in the said order it was ordered that sanction is hereby granted that the period commencing from 11.7.1983 to 16.12.1986 will be treated to be extra ordinary leave. Meaning thereby, by this order by inflicting major penalty of withholding of three grade increments with cumulative effect, the State Government has regularized the services of the petitioner by way of allowing extra ordinary leave without pay to the petitioner for the

period from which he remained absent and joined the duties. Against this order, the petitioner has preferred a review petition. The same was also dismissed vide order dated 24.9.1993 (Annexure-16). Vide order Annexure-17, the Secretary, Irrigation Department has issued an order for granting extra ordinary leave without pay.

Learned counsel for the petitioner vehemently argued that similarly situated persons who remained absent from duty for more than eight years were exonerated whereas major penalty has been inflicted against the petitioner. Learned counsel for the petitioner has raised a legal question that under Rule 15 (2) of RCS (CCA) Rules, there is a provision for consultation with the RPSC but no consultation was made with the RPSC. Rule 15 (2) of Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 reads as follows :-

> "15 (2) – In respect of the State Services the powers of appointment to which is not delegated to a subordinate authority, before imposing the penalties other than censure, and withholding of increments, the Public Service Commission shall be consulted."

It is argued by the learned counsel for the petitioner that admittedly the petitioner was holding

the post of A.En., therefore, he was gazetted officer and for inflicting major penalty under Rule 16 of the CCA Rules, there is mandatory provision for consultation with the RPSC under Rule 15(2) of the Rules but RPSC was not consulted. Therefore, at the time of inflicting final penalty, the respondents have violated the mandatory provisions of the Rules. As such the order impugned deserves to be quashed and set aside. Learned counsel for the petitioner has invited my attention towards the impugned order and prayed that the order is non-speaking order and without considering the representation of the petitioner, which is filed by him in pursuance of the enquiry report, which is supplied to the petitioner. Therefore, the order deserves to be quashed on this ground also.

Per contra, learned Dy. Govt. Advocate, vehemently argued that in this case penalty of withholding of three grade increments with cumulative effect has been passed by the Government and according to proviso to Rule 16 (10) of the CCA Rules, it is provided that in every case in which it is necessary to consult the Commission the record of the enquiry shall be forwarded by the Disciplinary Authority to the Commission for its advise and such advise shall be take into consideration before making an order imposing such penalty on the Government servant. While inviting my attention towards aforesaid proviso

to Rule 16(10) of the Rules, it is submitted that it is not found necessary by the disciplinary authority to get any consultation with the RPSC because order for inflicting penalty of withholding of incriment was passed, therefore, there is no question of raising voice by the petitioner that respondents have committed an illegality while not following the mandatory provision of Rule 15 (2) of CCA Rules for consultation with the Commission is provided before passing major penalty. Therefore, the order impugned is perfectly legal order and there is no error in the order.

Further, it is submitted by learned Dy. Govt. Advocate that petitioner remained absent from duties for more than three years and for the same, he was charge-sheeted and thereafter, enquiry was initiated and after providing opportunity of hearing to the petitioner, final order was passed while considering his all grounds and contentions. Therefore, upon perusal of the order impugned, it is clear that order impugned is reasoned order and all the grounds taken by the petitioner are properly considered. Thus, there is no substance in the arguments advanced by the learned counsel for the petitioner. Hence, this writ petition deserves to be dismissed.

I have consided the rival submissions made by both the learned counsel for the parties and perused

the record.

In this case, it is admitted position that the petitioner was working on the post of Assistant Engineer and his selection was made through Rajasthan Public Service Commission. It is also admitted case that the petitioner has worked under the State Service Rules and he was gazetted officer at the time when he was charge-sheeted.

According to Rule 15 (2) of the RCS (CCA) Rules for inflicting penalty other than censure and withholding of grade increments without cumulative effect, it is mandatory to consult with the RPSC. In this case, not only the petitioner was penalized with the major penalty of withholding of three grade increments but the order has been passed under Rule 16 of the Rules for withholding of three grade increments with cumulative effect, which is defined as major penalty. Therefore, the case of the petitioner is obviously covered under Rule 15 (2) of the RCS (CCA) Rules of 1958. As such, before inflicting major penalty against the petitioner, it was mandatory upon the disciplinary authority to make consultation with the Commission as provided under Rule 15(2) of the RCS (CCA) Rules, 1958 but it has not been done in this case. Similarly, upon perusal of the impugned order, it is also clear that the grounds raised by the petitioner were not considered, therefore, the order impugned cannot be defined as a reasoned order.

In these circumstances, the order impugned dated 26.09.1992 (Annexure-14) passed by the State Government in violation of Rule 15 (2) of RCS (CCA) Rules, 1958 is hereby quashed and set aside as well as the consequential orders passed by reviewing authority dated 24.09.1993 (Annex.-16) is also set aside with the liberty to the respondent No.1 that now the record of the enquiry may be sent to Rajasthan Public Service Commission and after obtaining consultation from the Commission, as provided under Rule 15(2) of the RCS (CCA) Rules, 1958, fresh order may be passed in accordance with law. It is also made clear that at the time of passing fresh order, all the grounds taken by the petitioner in his representation shall also be considered objectively.

Accordingly, the writ petition is allowed.

(GOPAL KRISHAN VYAS), J.

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